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10/701,050	11/04/2003	Michael T. McConnell	PRINC-050A	5510

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT PAPER NUMBER

2859

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/701,050

Applicant(s)

MCCONNELL ET AL.

Examiner

Gail Verbitsky

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/15/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 10 is objected to because of the following informalities: "the baby's body" in line 3 lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3, 6, 10-11, 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu (U.S. 6641544).

Liu discloses in Figs. 2, 4-5 a device for measuring and displaying body temperature, the device attached to a clothing, thus, making the clothing a temperature-indicating clothing. The clothing is sized and configured to accommodate a baby mammalian, the clothing, inherently, has an inner and outer sides/ surfaces.

The body temperature-measuring device engaged (fasten) on a piece of the clothing 90 (col. 2, lines 45-46). There is a temperature measuring member 30 for measuring temperature of the body disposed in contact with the body and in communication with a temperature displaying member 70 for receiving temperature from temperature measuring member and displaying it numerical value on the outside surface, so as to

Art Unit: 2859

make it visible to an operator. As shown in Fig. 5, the clothing is a sleepwear or a pajama.

For claim 6: there is a flexible cable 33 communicates said members, the cable is on the reel which makes the cable extendable/ retractable.

For claims 10-11: as shown in Fig. 5, the temperature measuring member 30 has a temperature measuring surface (contact pad/ conductive body) 32 sized and configured to contact the baby's body underneath the inner surface of the clothing for measuring the temperature of the baby.

For claims 13-14: the temperature displaying member is sized and configured to extend from the temperature measuring member 32 by means of the cable and to expose the display 70 on the outside surface of the clothing, as shown in Fig. 5. This would imply, that, depending on the positioning of the baby and the operator relative to the baby, the operator can fasten the displaying member directly on top of the temperature measuring member, i.e., on left side of the outer surface.

For claim 15: the electrical cable 33 is an electrical rod/ wire.

For claim 16: the temperature-measuring member, as shown in Fig. 5, is of a generally circular shape/ configuration.

For claim 17: the displaying member, as shown in Fig. 2, is of a generally circular shape/ configuration.

***Claim Rejections - 35 USC § 103***

Art Unit: 2859

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-5, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu.

Liu discloses the device as stated above in paragraph 3.

Liu does not explicitly teach the limitations of claims 4-5 and 12.

With respect to claims 4-5: making the baby clothing the particular clothing, i.e., a sleep sack or a daywear, as stated in claims 4-5, absent any criticality, is only considered to be the "preferred" or "optimum" clothing that the [person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, on the particular time when the temperature is to be taken, etc. See in re Boesch, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the temperature-measuring device attachable to any kind of clothing wearable by a baby, so as to allow the operator to take temperature measurement independent on the particular clothing on the baby.

With respect to claim 12: making the conductive material of aluminum, absent any criticality, is only considered to be the "optimum" material that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide for the conductive material, disclosed by Liu, since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention. In re Leshin, 125 USPQ 416.

6. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Sackner et al. (U.S. 6551252) [hereinafter Sackner].

Liu discloses the device as stated above in paragraph 3.

Liu does not explicitly teach the limitations of claims 7-8.

Sackner discloses the device/ clothing in the field of applicant's endeavor, the clothing comprising a pocket wherein a hand held display device connected to a sensor, can be placed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Liu so as to have a pocket for positioning the display, as taught by Sackner, in order to avoid fastening device and to allow the operator to quickly remove the display from the clothing if there is a need to do so.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liu and Sackner as applied to claims 7-8 above, and further in view of Mohrman (U.S. 4121462).

Liu and Sackner disclose the device as stated above in paragraph 6.

Liu and Sackner do not explicitly teach the limitations of claim 9.

Mohrman discloses a device in the field of applicant's endeavor, the device comprising a probe 3 to sense temperature, a pocket sized/ hand held unit 47 having a display, wherein the display has a scale providing a numerical visual indication of an illuminated selected temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the sensor, disclosed by Liu and Sackner, with the probe, as taught by Mohrman, because both of them are alternate types of temperature measuring members which will perform the same function of sensing the temperature of the body, if one is replaced with the other.

8. Claims 18, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Mohrman.

Liu discloses the device as stated above in paragraph 3.

Liu does not explicitly teach the limitations of claims 18 and 20.

Mohrman discloses a device in the field of applicant's endeavor, the device comprising a probe 3 to sense temperature, a pocket sized/ hand held unit 47 having a display, wherein the display has a scale providing a numerical visual indication of an illuminated selected temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to illuminate only the selected temperature indication, as taught by Mohrman, in order to provide a better visual information and thus, improve accuracy of the device.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liu. In view of Ronci (U.S. 20020097777).

Liu discloses the device as stated above in paragraph 3.

Art Unit: 2859

Liu does not explicitly teach the limitations of claim 19.

Ronci teaches that different/ selected temperature value can correspond to different colors of measured temperature and indicated on a display.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to illuminate selected color corresponding to measured temperature, as taught by Ronci, in order to provide a better visual information and thus, improve accuracy of the device.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky   
Primary Patent Examiner, TC 2800

August 13, 2004